

1 competition requirement or that it has satisfied the competitive
2 checklist.

3 I want to end with responding to the image which was
4 mentioned in the opening comments by Southwestern Bell of a host
5 giving a party. I think the original image they were using was
6 hors d'oeuvres. Now they are talking about drinks. Let me get
7 back to the hors d'oeuvres because it helps me illustrate a
8 point.

9 Southwestern Bell asked us to imagine that it hosted a
10 party. It is serving hors d'oeuvres. It has those available in
11 some sense, but none of the guests are partaking. The point of
12 this image seems to be, can you ask us to do anything more if
13 our guests aren't hungry. Well, the response here is that the
14 guests are hungry. The response here is, we don't see in some
15 instances any and in other instances not enough food on those
16 trays, and that appetite stimulating, reassuring aroma of
17 tempting morsels being prepared and warmed in the kitchen has
18 not yet reached us. So we end with the experience of the
19 perception of the new entrant. How do we feel at that party?
20 Although we have been invited to the party--and some may say
21 perhaps begrudgingly--there is a steep cover charge. And the
22 welcome mat oftentimes seems awfully small indeed.

23 Thank you, Your Honor.

24 THE COURT: Thank you. the rule you were referring to
25 regarding comments, what rule was that?

1 MS. LaValle: Here, Your Honor, I have a copy of it
2 that I will be happy to give you. It is 165:5-13-3(j). It
3 provides "...any comments which are received which aren't
4 tendered through a live witness who is subject to cross-
5 examination can only be considered as argument and not as proof
6 of any recitation of facts contained therein.

7 THE COURT: So that we don't go into that part
8 anymore, is that not in reference to public comments under the
9 Commission's rules?

10 MS. LaVALLE: It draws a distinction, Your Honor,
11 between the filing of prefiled testimony and the presentation of
12 a witness at a hearing and comments. That is the distinction
13 made under the prepared testimony statement. So it is not
14 limited just to public comments in any bystander kind of
15 capacity, but I believe to anyone who chooses to file comments
16 rather than presenting a witness who is subject to cross-
17 examination.

18 THE COURT: I understand what you are saying, but I
19 believe-- I will look at it during the recess. I believe that
20 is strictly--it is our Commission's interpretation that that is
21 related to public comments, people who come in off the street,
22 but I will evaluate that and make a determination. Because we
23 specifically provided in the procedural schedule that the
24 parties could file comments or could have witnesses--either one.

25 I'll take a look at it.

1 MS. LaVALLE: Your Honor, we are not disputing that
2 that option was given in the procedural order. I think what it
3 comes down to is, any party who believes that the recommendation
4 of the Commission is going to turn on any disputed fact has to,
5 under the Commission's rules present its position in the form of
6 testimony of evidence of live witnesses who will be subject to
7 cross-examination so there could be a determination of that
8 disputed fact because it is not a determination that could be
9 made on the basis simply of comment.

10 THE COURT: All right, Ms. Thompson--or Ms. Jenkins?

11 MS. THOMPSON: Are we doing just the opening
12 statements now, as opposed to the witnesses?

13 THE COURT: Let's go off the record.

14 (A brief off-the-record discussion was had.)

15 MS. LaVALLE: Your Honor, we would at this time mark
16 for inclusion in the record prefiled comments of individuals who
17 are not on AT&T's witness list but whose comments were filed in
18 accordance with the procedural schedule. If it makes sense to
19 Your Honor, we would just go ahead and-- They are listed on the
20 Exhibit List as Exhibit No. 32, the entire collection of
21 prefiled testimony and what we are now offering as comments. I
22 would propose that we simply start with Exhibit No. 61 and, for
23 purposes of identification for the record, have those identified
24 by the individual names of the witnesses.

25 THE COURT: That will be satisfactory.

1 MR. GRAY: I may have mentioned that the FCC had
2 issued a public notice and the procedure of this docket. I
3 would propose that that public notice be marked in the record as
4 Exhibit No. 61, and we can then start with Exhibit No. 62, if
5 there is not objection.

6 (Instrument marked for identification as
7 Exhibit No. 61.)

8 THE COURT: Exhibit No. 61 will be the FCC's Public
9 Notice. We will now start with Exhibit No. 62.

10 (Instruments marked for identification as
11 Exhibits 62, 63, 64, 65, 66, 67, 68, 69,
12 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80.)

13 MS. LaVALLE: Your Honor, I have had marked as Exhibit
14 No. 62 through 67. No. 62 is the comments of Edward Tan on
15 behalf of AT&T. Exhibit No. 63, Denise Crombie. Exhibit No.
16 John Mayo. Exhibit No. 65, Dan Keating. Exhibit No. 66 Joseph
17 Gillan. Exhibit No. 67. Fredrick Warren-Boultan. He is a joint
18 witness of AT&T and MCI.

19 Next, as Exhibit No. 68, the opening Statement of Mark
20 Lancaster, who is one of the witnesses who was on our witness
21 list and who Southwestern Bell stipulated we could offer his
22 testimony without the live witness being present. He was
23 available yesterday but not today. His Opening Statement is
24 Exhibit No. 68. His actual prefiled testimony is Exhibit No.
25 69.

1 MR. TOPPINS: May I inquire, is that the same thing as
2 his summary?

3 MS. LaVALLE: Yes.

4 Next, Your Honor, is marked the actual prefiled testimony
5 of the three witnesses who we have here today. Exhibit No. 70
6 is the Summary of Steven Turner. Exhibit No. 71 is the Prefiled
7 Testimony of Steven Turner. Exhibit No. 72 would be the Opening
8 Statement. A joint statement and summary by Robert Falcone and
9 Steven Turner. Robert Falcone was the witness that Southwestern
10 Bell agreed we could stipulate in his testimony since it is a
11 joint statement and since Mr. Turner is here, we also have that
12 alternative way of offering the Prefiled Testimony of Robert
13 Falcone and Stephen Turner into the record, and that should be
14 marked as Exhibit No. 73.

15 Exhibit No. 74 is the Summary of Nancy Dalson. Exhibit No.
16 75, the Prefiled Testimony, Direct Testimony of Nancy Dalton.
17 Exhibit No. 76 is the Rebuttal Testimony of Nancy Dalton.
18 Exhibit No. 77 would be the Summary of Phillip Gaddy. Exhibit
19 No. 78 would be his actual Prefiled Testimony.

20 Exhibit No. 79 would be a collection of RFI responses
21 submitted in accordance with the procedural schedule. Exhibit
22 No. 79 is the non-confidential portions of the RFI responses
23 that AT&T is asking to have entered into the record. Working
24 with Southwestern Bell, they have produced for us and is marked
25 as Exhibit No. 80 the confidential portions of those particular

1 RFI responses so that the record will be complete. We have
2 marked confidential attachments as highly confidential and have
3 included a single copy in a sealed envelope for purposes of the
4 record.

5 Your Honor, we would offer at this point as to any of the
6 three witnesses--which involves actually four pieces of
7 testimony--if there is not to be cross on any one or more of
8 those, we would offer just to have the opening statement
9 submitted into the record without being read in order to be more
10 efficient.

11 THE COURT: Any objections?

12 MR. TOPPINS: I understood that if there were no
13 objections, we would stipulate to both the Summaries and the
14 actual Prefiled Testimony going into the record without cross
15 and without the need of the witness taking the stand.

16 THE COURT: Since there is no objection, it will be
17 accepted.

18 MR. MOON: Does that include Exhibit 32?

19 THE COURT: These are the statements of AT&T broken
20 down, so it would include Exhibit No. 32 also.

21 MR. LaVALLE: And, Your Honor, we would want the
22 record to reflect that those witnesses, Mr. Steven Turner, Nancy
23 Dalton, and Phillip Gaddy are in the hearing room and are
24 available to take the stand for purposes of cross-examination.

25 THE COURT: Do all parties waive cross examination?

1 (Affirmative indications.) We will accept all exhibits into the
2 record and note that the parties have waived cross-examination.
3 The record will speak for itself based on the filings herein.

4 Does AT&T rest at this point?

5 MS. LaVALLE: Yes, Your Honor.

6 THE COURT: Thank you. Ms. Jenkins.

7 MS. JENKINS: Your Honor, may I have just a minute.
8 I truly hate to impose.

9 THE COURT: We will take a ten-minute recess.

10 (In an off-the-record discussion it
11 was decided to take a noon recess.)

12 THE COURT: We are back on the record. Ms. Jenkins.

13 MS. JENKINS: Thank you.

14 I appreciate the opportunity to address you today and speak
15 regarding what Sprint believes are the necessary criteria that
16 needs to be examined by this Court in order to make a
17 determination that Southwestern Bell has satisfied the 14-point
18 checklist under the provisions of the Federal Act.

19 To that extent, I have taken the liberty of putting that in
20 an outline, and I would like to share that with you right now.
21 It sets out what Sprint considers to be various matters of law
22 and matters of fact and matters of policy that should be given
23 consideration before a determination can be made in this
24 proceeding.

25 I apologize, what started out to be a single-page document

1 for ease of reading is actually now rather lengthy. That is
2 attributable to the fact that I decided it was necessary to
3 insert the relevant provisions of the Act under each of the
4 fourteen points listed under the competitive checklist. If you
5 will look beyond that and simply examine where I am going to
6 speak following the Roman numerals, I think it will be easier
7 for you. And I shall endeavor to keep my remarks scripted
8 exactly to those Roman numerals and we can get through this
9 fairly quickly.

10 I had hoped to address my remarks to the testimony that I
11 was going to have my witnesses sponsor. I will, at the
12 conclusion of these remarks, move for admission of that
13 testimony.

14 Let me say here to you today though, my arguments are not
15 exhaustive and everything that this Commission needs to
16 consider, nor are they all-inclusive of what needs to be
17 considered regarding Southwestern Bell's compliance with this
18 Act. But with respect to I, I have noted matters of law. I
19 have set out three different areas. I think for the most part
20 with respect to A regarding the Track "A", Track "B" arguments
21 and with respect to "B", whether or not all requirements under
22 Section 271(2)(1)(A) must be met before Southwestern Bell may
23 enter the long-distance market. Thirdly, (C), that third
24 statement, with respect to interim rates and whether or not they
25 can be cost based has pretty much been adequately addressed by

1 AT&T in this docket. I will say at this point, though, that we
2 concur with the comments made by AT&T. We believe that Track
3 "A" is the only track available to Southwestern Bell at this
4 time, and that pursuant to that track they must meet all of the
5 requirements of Section 271 before they can enter the long-
6 distance market. And, thirdly, with respect to the issue of
7 whether or not the interim rates are cost based, again, as AT&T
8 indicated to you earlier this morning, the issue is not whether
9 or not they are interim. Frankly, there has been no
10 determination made by this Commission as to whether or not the
11 rates proposed and adopted by the Commission in the
12 AT&T/Southwestern Bell arbitration are, in fact, cost based.

13 Southwestern Bell did, in fact, submit their costing
14 methodologies and cost studies in that arbitration, but that
15 does not mean that they were necessarily cost based. There was
16 no determination made. I think, too, by Southwestern Bell's own
17 admission, because there remains yet full Commission review of
18 those proposed rates and also because those interim rates are
19 subject to true up. That in and of itself tells you those are
20 not cost based. If they were, there wouldn't be any need for
21 trueing up later.

22 I am moving down through my outline to Roman Numeral II,
23 which concerns matters of fact.

24 This is the area that I considered, or, at least, have
25 deemed to be the compliance review. For the sake of brevity and

1 because Sprint concurs with the remarks already made by AT&T, I
2 will not discuss the 14-point checklist on a point-by-point
3 basis. Suffice it to say that Southwestern Bell has the burden
4 in this case to demonstrate that it has met the competitive
5 checklist. We would submit that to date Southwestern Bell has
6 provided insufficient documentation to give this Commission any
7 conclusive information that it needs to determine whether or not
8 Southwestern Bell has met that checklist.

9 As described by Sprint's witness, Ed Phelan, and, more
10 specifically, Cindy Meyer in her Direct Testimony, Southwestern
11 Bell can't demonstrate that it is providing access and
12 interconnection in accordance with the competitive checklist.
13 It's OSS functions, as mentioned earlier by AT&T are too
14 undeveloped to allow for employment on a commercial scale, and
15 also as I argued earlier, Southwestern Bell's proposed rates
16 fail to comply with the checklist because those rates have not
17 been deemed to be cost based. And no where has Southwestern
18 Bell shown that any of the contracts that it has in place
19 contain rates that are necessarily cost based. To this end I
20 would add that Southwestern Bell has not demonstrated that it is
21 actually providing all of the checklist elements through that it
22 has on file.

23 I want to speak a little bit at length with respect to
24 Subsection B under II. That is the area which concerns whether
25 or not Southwestern Bell has unbundled its OSS or Operations

1 Support System Functions, pursuant to Section 251(C). And the
2 only reason I want to touch upon this is simply because we will
3 not be putting forward Sprint's witness, Cindy Meyer, who would
4 summarize in her Direct Testimony whether or not Southwestern
5 Bell has, in fact, unbundled any of its OSS's to Sprint's
6 satisfaction.

7 Ms. Meyer's testimony states that Southwestern Bell's
8 nondiscriminatory operations for its systems have not yet been
9 developed, tested or implemented. As a result of this, Sprint
10 and other CLECs don't have access to unbundled elements. They
11 don't have access to unbundled elements, more importantly, on
12 the same basis that Southwestern Bell has accessed those
13 elements itself. Clearly Southwestern Bell is required under
14 the Act to demonstrate that all interfaces offered to
15 competitive LECs for access to OSS are operationally ready for
16 the purpose of providing service to resale and unbundled network
17 elements. Even if Southwestern Bell could argue today that
18 those interfaces are operational, there is no evidence before
19 this Commission that the interfaces are nondiscriminatory.

20 I will now move forward to Roman Numeral III under my
21 outline and simply touch upon what I deem to be matters of
22 policy; that is, whether or not Southwestern Bell has met the
23 public interest standard.

24- Sprint's witness Ed Phelan in his Prefiled Direct Testimony
25 I think did a very good job of explaining why premature release

1 of Southwestern Bell into the end region long-distance market is
2 not in the public interest of the citizens of Oklahoma. It is
3 Sprint's position that the determination of whether Bell should
4 be permitted into the end region interLATA market turns on
5 whether the grant of an end region application will, on balance,
6 produce benefits for consumers in the short and long term by
7 creating, preserving, and enhancing competition in both the
8 local and interexchange markets.

9 As Sprint's witness explained in his Direct Testimony, Mr.
10 Phelan noted that Southwestern Bell's entry into the long-
11 distance market is likely to harm the competitive process in
12 that market unless Southwestern Bell faces effective local
13 competition. Without any significant degree of local
14 competition, Sprint submits that it is contrary to the public
15 interest to allow Bell to provide end region long-distance
16 service.

17 In conclusion, let me say that there are three points that,
18 if I have said anything today, I am hopeful that you will bear
19 in mind. The first is that the balancing factor under the Act
20 through Southwestern Bell's entry and to the long-distance
21 market in Oklahoma, is for Southwestern Bell to open its network
22 and service to the entry of competitors into local exchange
23 service territories. I know you have heard that throughout the
24 day. I am certain that you are cognizant of that after having
25 read the record. I need to impart to you that Brooks Fiber's

1 presence in Tulsa and Oklahoma City clearly while laudable is
2 insufficient to constitute effective local competition. It
3 cannot be said often enough.

4 Two, I think one other items that you need to keep in mind
5 is that the Federal Telecommunications Act is clearly stated in
6 terms to indicate the presence. These terms are not
7 anticipatory in any way. The Act simply does not contemplate
8 that any of the requirements can be met on the basis of future
9 compliance, however near that may be. This is why this
10 Commission, and you, Your Honor, must take great care to the FCC
11 the way things are today, not the way Southwestern Bell promises
12 them to be. Setting the stage for competition and actual
13 competition clearly are two different things.

14 Thirdly, and I mentioned this earlier in my remarks
15 but I think it needs to be stated again; that is, that the
16 burden of demonstrating the requirements of the Act has been
17 satisfied clearly rests on the shoulders of Southwestern Bell.
18 As demonstrated by Sprint in their Direct Testimony and the
19 comments that Sprint filed in this proceeding and the comments
20 made here today by AT&T and other intervenors, is that
21 Southwestern Bell clearly has not met that burden.

22 Thank you very much.

23 THE COURT: Thank you. Let's take care of a couple of
24 paper matters. Those exhibits--

25 (Instruments previously marked by the

1 Court Reporter as Exhibit Nos. 81, 82,
2 83, and 84.)

3 MS. JENKINS: Excuse me, Your Honor. I took the
4 liberty of already having my four documents marked and the Court
5 Reporter has that information.

6 THE COURT: What numbers are they?

7 MS. JENKINS: I have that on my Exhibit List, but I
8 can't seem to locate. I think it was the Summary of Cindy
9 Meyer--

10 THE COURT: Okay, I have them. The Summary of the
11 Testimony of Cynthia Meyer, Exhibit No. 81. Her testimony is
12 Exhibit No. 82. The Summary of Mr. Phelan is Exhibit No. 83.
13 His testimony is Exhibit No. 84. The sheet that you were
14 speaking from, are you going to enter that? What you passed
15 around as a guideline?

16 MS. JENKINS: Yes, I will be happy to do that. Also,
17 Your Honor, I did not have the Court Reporter mark the documents
18 that we prefiled that were not necessarily testimonies. There
19 may be three of those documents.

20 MS. THOMPSON: Those are already listed. Do they need
21 to be remarked?

22 THE COURT: We will just accept them into evidence.
23 Is there any objection to accepting into the record all of the
24 prenumbered exhibits off of the Exhibit List? (No objections
25 raised.) Okay, we will accept all of the exhibits on the

1 Exhibit List at this time.

2 As to the matter brought up regarding the FCC filing. I am
3 going to accept it into the record with a late-filed exhibit in
4 general terms that describes a summary of those changes that
5 have been made since the filing that I have looked at and I
6 guess all of the other parties have looked at. So whatever the
7 last exhibit is, we will make that last exhibit after that the
8 late-filed exhibit of a short summary, please.

9 Then as to the question regarding comments, I will note
10 that we have had a procedural schedule in this matter. We have
11 done this in several cases throughout time. We allow for a
12 party to either file comments and/or testimony. It is the
13 Commission's practice to do that according to the case. The
14 burden is on the Applicant in the case. You will also note that
15 under 165:5-13-3(e) of the Rules of Evidence: The Commission or
16 the Administrative Law Judges shall follow the rules of evidence
17 applied in the District Courts of Oklahoma, except that such
18 rules may be relaxed with the Commission or the Administrative
19 Law Judge deems it in the public interest to do so."

20 We determined, by agreement of the parties, at the
21 beginning of this case that the parties could either file
22 comment and/or testimony. There was no appeal taken to that
23 question. The Commission embodied that in an order and it
24 became the order of the Commission. It is past the appeal time.

25 I will further say that the portion that you are referring

1 to regarding public comment is talking exactly about that,
2 public comment. That is when a person other than a party to the
3 proceeding appears, and that tells the weight that that will
4 have.

5 We will recess this record for a few minutes so that the
6 Commissioners can have their Signing Agenda.

7 (Whereupon this proceeding was briefly recessed.)

8 THE COURT: We are back on the record.

9 As to the comments regarding public comments, I might note
10 for the record that if, in fact, the argument was correct and I
11 was to accept it, that would be an awful easy way out of this
12 case. I do know what the Commission's rules formulated and I
13 know the interpretation which has been given consistently to
14 this section and that is that it is the public comment section
15 for the Commission.

16 Let's move on to other matters.

17 MR. STAKEM: Your Honor, at some point I would like,
18 on behalf of MCI, to make a record on this particular point. I
19 can defer it until later in the proceeding or now--

20 THE COURT: Why don't you file a late-filed exhibit.
21 It is a ruling. A ruling at the hearing can be taken up at the
22 appeals. I have already heard arguments on it.

23 The next party to speak, please.

24 MR. STAKEM: You haven't heard argument about-- MCI
25 never agreed to waive cross-examination or ever agreed that

1 comments had the weight of testimonial evidence.

2 THE COURT: I have made one statement: The burden is
3 on Southwestern Bell to prove their case. I am not going to go
4 into the legal ramifications of whether you have waived or not
5 waived cross-examination of those persons. How they present
6 their case is their business. How I evaluate it, I will let you
7 know later.

8 MR. STAKEM: Thank you.

9 THE COURT: Okay, next party.

10 MR. MOON: Your Honor, I just wanted to make sure I
11 preserve the AG's right to appeal on this issue if we choose to
12 do so. For the record I wanted that noted.

13 THE COURT: It will be part of the ALJ's report.

14 MR. MOON: Thank you.

15 THE COURT: I will address you-- It will help clarify
16 it if you will look at the "Definitions" section of the Rules of
17 Practice. There is a difference between a person and a party of
18 record. You are all parties of record. That talks about
19 persons. Persons are people who walk in here. In rate cases
20 you are aware that sometimes thousands of what we call public
21 comments come in. They are put in one file with one exhibit
22 number.

23 At the time of the setting forth of this procedural
24 schedule, the parties agreed and there was no appeal taken that
25 the parties could submit comment or they could submit witnesses.

1 Now as to the weight of that, that is not the question. The
2 question is whether this is proper procedure. And it is proper
3 under the rules of this Commission. If not, under (e) they can
4 be waived. And they were waived by full agreement of all of the
5 parties.

6 MR. STAKEN: That's the point that I want to make a
7 record on specifically. MCI never agreed to that. MCI wasn't
8 present by counsel or otherwise at the meeting at which this
9 procedural schedule and the terms of it were even discussed.

10 THE COURT: Mr. Stakem, the procedural schedule was
11 put on the record and was accepted.

12 Next testimony. MCI, are you ready? Mr. Morris?

13 MR. MORRIS: Thank you, Your Honor, basically, in
14 order to speed things along, I will not cover the points that
15 AT&T had made so well. We would agree with those points and
16 refer Your Honor to Exhibit No. 57, which was the jointly
17 sponsored testimony of Frederick Warren-Boultan.

18 With that, I will sit down.

19 THE COURT: Thank you, sir. Mr. Gist.

20 MR. GIST: Thank you, Your Honor, if it please the
21 Administrative Law Judge, Fred Gist on behalf of Brooks Fiber
22 Communications of Oklahoma and of Tulsa.

23 Just in the way of remarks or comments, we support the
24 arguments you have heard previously by AT&T and Sprint, and
25 would direct you to the comments which were filed in the form of

1 sworn statements by Mr. Ed Cadieux on behalf of Brooks Fiber in
2 the cause. They are numbered on the Exhibit List as No. 33 and
3 44, and by virtue of your previous comments, I assume those are
4 already in the record.

5 Mr. Cadieux prepared a summary of his testimony. I have
6 that available if you would like that. We do have that
7 available if you so desire.

8 The only other comment that I did want to make-- And we
9 would point out also that Mr. Kadieux is present and available.
10 We would submit him for cross-examination by any party who would
11 so choose.

12 THE COURT: Is there any cross examination?

13 MR. MOON: I would like to examine, Your Honor.

14 THE COURT: Mr. Cadieux, you make take the stand.
15 Is there any objection to accepting Mr. Kadieux's testimony into
16 the record subject to cross-examination. (Negative responses.)
17 (Witness sworn.)

18 EDWARD CADIEUX

19 called as a witness, and after having been duly sworn, testified
20 on his oath as follows, to wit:

21 CROSS EXAMINATION

22 BY MR. MOON:

23 Q This is labeled "Brief in Support of Application by SBC
24 Communications, Inc., Southwestern Bell Telephone Company and
25 Southwestern Bell Long-Distance for Provision of End Region

1 InterLATA Services in Oklahoma." It was submitted as part of
2 the draft application by Southwestern Bell in this cause.

3 Mr. Kadieux, I would like to direct your attention to page
4 6 of this draft brief and ask you to read the sentence that I
5 have marked into the record.

6 A "Brooks Fiber commenced serving both residential and
7 business customers over its own facilities on January 15, 1997
8 and thus qualifies as a facilities-based competitor not only in
9 the ordinary sense but also under the narrow definition set out
10 in Subsection 271(c)(1)(a)."

11 Q Can you explain to the Court whether that statement is
12 true? Or just elaborate, based on your position with Brooks
13 Fiber.

14 A Can I have that in front of me again?

15 Q Sure.

16 A Well, the statement is inaccurate, erroneous in at least
17 one if not two respects. Maybe it's three respects.

18 First of all, Brooks does not serve--has not; does not--has
19 not at any time served residential customers over its own
20 facilities in Oklahoma. Period. In Brooks' view, depending on
21 how you interpret the statute, but for purposes of Section
22 271(c)(1)(a), Brooks does not believe that it is serving
23 residential customers in any manner relevant to Section
24 271(c)(1)(a), whether over its own facilities or over resold
25 facilities, which is what is happening. The residential

1 "customers" that we have are all Brooks employees. We consider
2 them test customers. We have not made any general offering of
3 service to residential customers.

4 Q How many residential customers, which are your employees--

5 A Four, total, in the state of Oklahoma.

6 And finally, the last point is the definition of Section
7 271(c)(1)(a), and I won't go into the detail there, but
8 obviously we have a significantly different interpretation of
9 that provision of the statute.

10 Q Is Brooks Fiber currently actively marketing residential
11 service in Oklahoma?

12 A No.

13 Q And the four residential customers that Brooks Fiber
14 currently is providing service to is on a resold basis?

15 A Reselling Southwestern Bell's dial tone local exchange
16 service. Yes.

17 Q So you would not call yourself a facilities-based provider
18 as it relates to residential customers?

19 A Absolutely not. Not at this point.

20 Q Is it true that 27 percent of Southwestern Bell's
21 residential lines and a substantially higher percentage of
22 Southwestern Bell's business lines in Tulsa are within 1,000
23 feet of Brooks Fiber's existing network?

24 A I have not had an opportunity to make an independent
25 evaluation of that and confirm the accuracy of that. I guess

1 what I would say is, I would hope that our network runs
2 somewhere in the vicinity of substantial numbers of Southwestern
3 Bell's customers, otherwise, we have done a pretty poor job of
4 network planning. But obviously, I have a much different
5 opinion as to what implications that has currently in terms of
6 competition.

7 Q If that is the case, would it be reasonable to think that
8 Brooks Fiber would currently be serving a much higher number of
9 residential business customers than they actually are?

10 A Well, the reason-- There are a couple of reasons why we
11 are not.

12 THE COURT: I am going to ask you to just answer the
13 question. That was a yes or no. He didn't ask you the reason.

14 A Okay. Could you ask the question again?

15 Q I will rephrase it: Why is Brooks Fiber-- If this is the
16 case, that such a high percentage of Southwestern Bell's
17 residential lines and business lines are in such close proximity
18 to Brooks Fiber's existing network, why is Brooks Fiber not
19 serving a higher number of customers than that?

20 A There are at least four reasons that I can think of off the
21 top of my head. One, we just started our initiation of service
22 in any manner fairly recently. January.

23 Secondly, Brooks has never intended to be in the resale
24 business on any pervasive, broad sense. As a result of that,
25 our primary methods of accessing customers are either connecting

1 customers directly to our fiber or connecting customers through
2 the use of unbundled loops. We are not serving customers
3 currently through use of unbundled loops for reasons that I
4 described in my testimony because we have not completed the co-
5 locations as yet. We are only serving a limited number of
6 customers off of our fiber ring because by the nature of the
7 service, it is only economical for business customers and
8 business customers of a certain size to connect directly to the
9 fiber ring.

10 Our main desire long term is to serve as many customers as
11 we reasonably can by unbundled loops, but we don't have that
12 current availability right now.

13 Q Could you explain the facilities-based service that you are
14 currently providing to business customers?

15 A Well, the facilities-based service we are providing to
16 business customers is a subpart of the service we are providing
17 to our business customers; that is, directly connecting business
18 customers who are located in close proximity to our fiber loop,
19 directly connecting them to our fiber. The transmission then
20 runs to our switch and from there is switched out either back to
21 our customers or, more likely, over the Southwestern Bell network
22 to terminate with Southwestern Bell customers. That is the
23 facilities-based business customers we have right now.

24 We also have other business customers that are not
25 facilities based, in my opinion.

1 Q Before I ask you to describe that type of service, would
2 you characterize the first type of service that you
3 characterized as facilities based, would you characterize that
4 further as exclusively facilities based on your own facilities
5 or predominately?

6 A Well, if you looked at those customers alone and you looked
7 at them at a snapshot today, you probably would conclude that
8 they are provided exclusively over our own facilities. The only
9 hesitation is that-- I mean, they certainly are exclusively
10 over our facilities until they hit our switch. Then they are
11 also probably over our own facilities until they hit the
12 Southwestern Bell tandem. Obviously from that point on the
13 terminating end, the communication is over Southwestern Bell
14 facilities.

15 Q Briefly--it is already in the testimony, the type of
16 service you provide to your business customers. Would you
17 explain that?

18 A That is what we call the Type 2 service, where it involves
19 Books leasing what is referred to as a T-1, a dedicated circuit
20 from the end-user's premises. My understanding is that it
21 usually runs through the serving Southwestern Bell central
22 office. It is not switched at that location; it runs through
23 there; continues over a Southwester Bell dedicated facilities to
24 the Brooks switch. At that point it comes over to the Brooks
25 facilities at the switch. But from the end-user all the way to

1 our switch, it is over leased Southwestern Bell T-1 facilities.

2 MR. MOON: I have nothing further, Your Honor.

3 THE COURT: Thank you. Mr. Toppins, questions?

4 MR. MOON: Your Honor, may I ask: is further cross
5 restricted to the scope of my cross?

6 MR. TOPPINS: We haven't had any cross yet. It was
7 all friendly.

8 CROSS EXAMINATION

9 BY MR. TOPPINS:

10 Q Mr. Cadieux, the sentence that Mr. Moon read to you that
11 was in Southwestern Bell's draft brief, did you comment on that
12 in your comments or testimony regarding the inaccuracy of it?

13 A I don't know that we specifically referred to that, but I
14 did very explicitly identify how Brooks customers were being
15 served and was specific on that point in my initial comments.

16 Q Have you had a chance--and I know the time has been short;
17 have you had a chance to see whether the statement was correct
18 in the brief that was filed with the FCC?

19 A No, I have not had that opportunity.

20 Q With regard to your residential customers, we have heard
21 today that they are only employees of Brooks Fiber; is that
22 correct?

23 A That is my understanding, yes.

24 Q Do you have a tariff that has been approved by the
25 Commission?